

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
City of Hartselle)	Consent Order No. 10-XXX-CSW
Solid Waste Permit No. 52-07)	
200 Sparkman Drive)	
Hartselle, Alabama 35640)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the City of Hartselle (hereinafter “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.).

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2010 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.).

3. On September 26, 1988, December 23, 1997, March 14, 2003, and January 5, 2009, the Department issued Solid Waste Disposal Permit (hereinafter "the Permit") number 52-07 to the City of Hartselle (hereinafter "the Permittee") for the operation of a construction/demolition landfill (hereinafter "landfill") located on 99 Lovelady Street Northwest in Hartselle, Alabama.

4. On January 4, 2008, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for failing to submit an application for permit renewal at least 180 days prior to the expiration date of existing permit.

5. On January 25, 2008, the Department received a permit renewal application.

6. On June 25, 2009, Department personnel inspected the Permittee's landfill for compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.23(1)(a)1. requires that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented that the Permittee had failed to cover waste weekly. During the inspection, landfill personnel indicated that it had been three weeks since the facility covered waste.

b. ADEM Admin Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed 4 to 1. At the time of the inspection, Department personnel documented that waste was not confined to one area.

c. ADEM Admin Code r. 335-13-4-.17(2) requires that owners or operators of all facilities must design, construct and maintain a run-off control system from the active and/or closed portions of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm event. At the time of inspection, Department personnel documented that the sediment control fence located near the discharge point was not being properly maintained.

d. ADEM Admin Code r. 335-13-4-.23(1)(b) requires that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with adequate landfill equipment prior to placing the weekly cover. At the time of inspection, Department personnel documented that waste was not being spread in layers and thoroughly compacted weekly.

7. On July 1, 2009, the Department issued a NOV to the Permittee for the violations documented during the June 25, 2009, inspection.

8. On August 17, 2009, the Department received a response to the July 1, 2009, NOV.

9. On October 27, 2009, Department personnel inspected the Permittee's facility to determine compliance with the ADEM Administrative Code. During the inspection, the following violation was documented:

a. ADEM Admin Code r. 335-13-4-.17(2) requires that owners or operators of all facilities must design, construct and maintain a run-off control system from the active and/or closed portions of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm event. At the time of inspection, Department personnel documented that the Permittee had failed to properly maintain the sedimentation control structure.

b. ADEM Admin. Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed a 4 to 1 ratio or as approved by the Department. At the time of inspection, Department personnel documented that waste was not confined to a small area.

c. ADEM Admin. Code r. 335-13-4-23(2)(b) requires that litter shall be controlled within the permitted facility. At the time of the inspection, Department personnel documented that litter was scattered throughout the facility.

10. On November 3, 2009, the Department issued a NOV to the Permittee for violations documented during the October 27, 2009, inspection.

11. On December 30, 2009, the Department received a response to the November 3, 2009, NOV.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Permittee did not comply with provisions of ADEM Admin. Code Chap. 335-13. The Department has no evidence of any irreparable harm to the environment or any threat to human health or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The Permittee failed to operate in a manner commensurate with applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Permittee has realized a significant economic benefit as a result of the violations noted. However, the Permittee did not incur costs associated with operating in accordance with Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of efforts employed by the Permittee to mitigate potential effects upon the environment that may have been created as a result of the violations previously listed.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of similar violations.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and

the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Order with the following terms and conditions:

A. Pursuant to Ala, Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), the Permittee agrees to pay to the Department a civil penalty in the amount of \$6,000.00 to be paid in full within 45 days from the execution date of this Order.

B. Payments of the penalty shall be by cashier or certified check made payable to the "Alabama Department of Environmental Management" and remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

C. That immediately, upon the effective date of this Order, the Permittee shall comply with the requirements of ADEM Division 13 regulations.

D. That, within 30 days of the effective date of this Order, the Permittee shall submit documentation to the Department outlining the measures that have been or will be employed to ensure compliance with ADEM Division 13 regulations.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control

of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, State, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 10 working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Order shall not affect the Permittee's obligation to comply with any federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The parties agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

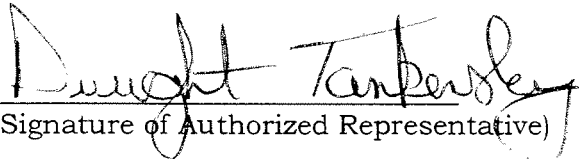
N. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF HARTSELLE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)
Dwight Tankersley
(Printed Name)

Lance R. LeFleur
Director

Mayor, City of Hartselle

(Printed Title)

June 23, 2010

(Date Signed)

(Date Signed)

Attachment A

Penalty Calculation Worksheet

City of Hartselle (Permit No. 52-07)

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Waste not covered weekly with 6" soil	1	1000		
Waste not confined to small area and on 4 to 1 slope	2	2000		1000
Failure to maintain runoff control system	2	2000		1000
Litter Controlled	1	500		
All waste spread in layers & compacted	1	1000		
Failure to submit the renewal application 180 days prior to expiration	1	500		
Totals:	-	7,000-	-	2,000-
Economic Benefit:	-			
Mitigating Factors:	-			
Ability to Pay:	-			
Other Factors:	-			-3,000
Civil Penalty:				\$6,000